

## § 18.403

### § 18.403 Exclusion of relevant evidence on grounds of confusion or waste of time.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of confusion of issues, or misleading the judge as trier of fact, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

### § 18.404 Character evidence not admissible to prove conduct; exceptions; other crimes.

(a) *Character evidence generally.* Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except evidence of the character of a witness, as provided in §§ 18.607, 18.608, and 18.609.

(b) *Other crimes, wrongs, or acts.* Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

### § 18.405 Methods of proving character.

(a) *Reputation of opinion.* In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) *Specific instances of conduct.* In cases in which character or a trait of character of a person is an essential element of a claim or defense, proof may also be made of specific instances of that person's conduct.

### § 18.406 Habit; routine practice.

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in con-

## 29 CFR Subtitle A (7-1-08 Edition)

formity with the habit or routine practice.

### § 18.407 Subsequent remedial measures.

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

### § 18.408 Compromise and offers to compromise.

Evidence of furnishing or offering or promising to furnish, or of accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, or negating a contention of undue delay.

### § 18.409 Payment of medical and similar expenses.

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

### § 18.410 Inadmissibility of pleas, plea discussion, and related statements.

Except as otherwise provided in this rule, evidence of the following is not admissible against the defendant who made the plea or was a participant in the plea discussions:

## Office of the Secretary of Labor

## § 18.608

(a) A plea of guilty which was later withdrawn;

(b) A plea of nolo contendere;

(c) Any statement made in the course of any proceedings under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or

(d) Any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn. However, such a statement is admissible in any proceeding wherein another statement made in the course of the same plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it.

### § 18.411 Liability insurance.

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

## PRIVILEGES

### § 18.501 General rule.

Except as otherwise required by the Constitution of the United States, or provided by Act of Congress, or by rules or regulations prescribed by the administrative agency pursuant to statutory authority, or pursuant to executive order, the privilege of a witness, person, government, State, or political subdivision thereof shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience. However with respect to an element of a claim or defense as to which State law supplies the rule of decision, the privilege of a witness, person, government, State, or political subdivision thereof shall be determined in accordance with State law.

## WITNESSES

### § 18.601 General rule of competency.

Every person is competent to be a witness except as otherwise provided in these rules. However with respect to an element of a claim or defense as to which State law supplies the rule of decision, the competency of a witness shall be determined in accordance with State law.

### § 18.602 Lack of personal knowledge.

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of § 18.703, relating to opinion testimony by expert witnesses.

### § 18.603 Oath or affirmation.

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.

### § 18.604 Interpreters.

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.

### § 18.605 Competency of judge as witness.

The judge presiding at the hearing may not testify in that hearing as a witness. No objection need be made in order to preserve the point.

### § 18.606 [Reserved]

### § 18.607 Who may impeach.

The credibility of a witness may be attacked by any party, including the party calling the witness.

### § 18.608 Evidence of character and conduct of witness.

(a) *Opinion and reputation evidence of character.* The credibility of a witness